STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street
San Francisco, CA 94105

RH05049799 **January 5, 2007**

Title 10, Article 7.1
Proposed Sections 2355.1-2359.7
Title Insurance and Statistical Plan

VOLUME 5 (Bates Pages 1706-2116)

<u>Summary and Response to Comments Received During 45-Day Comment Period</u>

Pursuant to Gov. Code § 11346.9(a)(3), repetitive comments are aggregated, summarized and responded to as a group. Comments which were not specifically directed at the proposed regulations or procedures followed in proposing the regulations are irrelevant and have been dismissed as a group.

Additionally, because some comments reflect a more technical analysis of the proposed regulations, the summaries for those comments were not summarized as a group. Comments for pages 1776-1900, 1949-1971, 2022-2031, and 2041-2116, which contain a more extensive technical analysis of the proposed regulations have been organized and summarized by comment volume number. The technical comments for Volume 5 are attached to the end of this summary and response.

<u>Comment:</u>
California Title Insurance and Escrow rates are already fair and competitive because of the:

- Decrease in Escrow fee
- Decrease in Refinance fees
- Supply and Demand
- Service Provided
- Cost of Doing Business
- Rates have not changed in 20 yrs.

<u>Pages reflecting this comment:</u>
1722, 1727, 1730, 1733, 1734, 1738, 1740, 1741, 1750, 1751, 1753, 1754, 1759-60, 1761, 1901, 1924, 1930, 1934, 1945, 1975, 1979, 1981, 1984, 1986, 1988, 1991, 1994, 2001, 2004, 2005, 2007, 2020, 2039

<u>Response:</u>

See Response to Common Comments: C.1, C.2, C.28, E.3, E.18, E.25, T.2, T.5, T.8, T.18, T.23, X.6, X.7, and X.9.

Comment:
Controlling fees is un-American and will cause the public great distress.

Pages reflecting this comment:
1936, 1937

Response:
See Response to Common Comments A.4 and X.11.

Comment:
Insurance title fees and real estate commissions are based on the price of the house.

Pages reflecting this comment:
1763

Response:

See Response to Common Comments E.17, E.18, E.24, T.8 and T.11.

Comment:
Title insurers have a right to make a profit. The regulations unjustifiably slash title and escrow fees [especially given their potential liability/bear the risk of the transaction].

Pages reflecting this comment:
1737, 1748, 1986, 1988, 2001, 2017, 2018, 2032

Response:

See Response to Common Comments A.14, E.8, E.19, E.20, T.5, T.13, and X.13.

Comment:
The regulations are not needed because title insurance and escrow fees provide a valuable public service and the fees are not outrageous.

Pages reflecting this comment:
1707, 1716, 1718, 1742, 1763, 1766-67, 1924-45, 1930, 1934, 1981, 1986, 1991, 1994

__Response:__
See Response to Common Comments C.1, C.2, C.3, C.30, E.3, E.9, E.10, E.13, E.15, E.26, T.5 and X.7.

__Comment:__
Regulations will have a negative effect on the entire loan industry.

__Pages reflecting this comment:__
1910, 1915, 1920, 1933

__Response:__
See Response to Common Comments X.2.

__Comment:__

Proposed regulations should not impose a blanket reduction.

__Pages reflecting this comment:__
1993

__Response:__
See Response to Common Comments A.10, A.13, X.2 and X.3.

__Comment:__
Title and escrow fees have reduced their fees and still make a profit due to good management and monitoring of cost.

__Pages reflecting this comment:__
1766

__Response:__
See Response to Common Comments C.28, E.11, E.18, E.24, T.8 and X.18.

__Comment:__
Escrow enables the collection of funds that would otherwise go uncollected; these regulations will impair the collection of funds.

Pages reflecting this comment:
1753, 1759

Response:
See Response to Common Comments E.12 and E.16.

Comment:
Title insurance is necessary for a prospering California economy; these regulations would lead to a minefield of uncertainty affecting the economy.

Pages reflecting this comment:
1986

Response:
See Response to Common Comments C.3 and C.33.

Comment:
Regulations should also cut property taxes, documentary transfer taxes, and city transfer stamps.

Pages reflecting this comment:
1975

Response:
To the extent that this comment recommends that the Commissioner regulate taxes and fees that are outside of his regulatory authority, the Commissioner rejects this comment. See also Response to Common Comments E.18.

Comment:
The Commissioner should postpone the hearings/not promulgate regulations until he has a full understanding of the functions and liabilities of an escrow officer/ understands the full value of escrow services.

Pages reflecting this comment:
1716, 1718, 1719, 1727, 1734, 1735, 1738, 1753, 1754, 1766-67, 1940, 1980, 1990

Response:
See Response to Common Comments E.5, E.25, T.28, and X.20.

Comment:
These Regulations will negatively impact the nonprofit community (by limiting volunteer involvement from title and escrow industry):

Pages reflecting this comment:
1731, 1732 (duplicate of 1731)

Response:
See Responses to Common Comments E.25 and T.23.

The regulations determine allowable costs and charges on the basis of industry-representative data. The discounts/relativities appearing in the regulations were derived from a comparison of relativities filed by companies. Furthermore, relativities are expected to be on-balance – that their collective effect should be neutral on revenues. So to the extent that a company uses a higher relativity for, say, a specific endorsement, it will be using a lower relativity for some other endorsement. The differences should have little or no effect on total revenues.

It should be remembered, no company is required to employ the regulatory relativities, nor is any company prohibited from employing different relativities. The relativities are merely inputs to the calculation of the regulatory maxima.

The regulations will not prevent title insurers or escrow entities from providing discounts to non-profit groups. The purpose of the regulations is simply to prohibit excessive rates.

See also Response to Common Comment T.2.

Comment:
Reducing title and escrow fees will eliminate jobs/increase unemployment.

Pages reflecting this comment:
1709, 1714, 1716, 1738, 1745, 1750, 1756, 1757, 1758, 1763, 1903-04, 1906, 1920, 1924-25, 1927, 1930, 1942, 1946A, 1947, 1975, 1978, 1979, 1981, 1988, 1991, 1994, 1996, 1997, 2001, 2004, 2007, 2017, 2032-33, 2040

Response:
See Response to Common Comments C.30, E.25, T.13 and X.9.

Comment:
- **Reducing fees will result in lower quality of service and delays to homebuyers and sellers/not in the best interest of the consumer because: will increase costs of buying and selling/take longer for loans to close**
- **Fewer Choices for customers closing escrow transactions**
- **Reducing escrow fees will result in less money to accomplish escrow tasks**

Pages reflecting this comment:
1706, 1708, 1709, 1712, 1714, 1720, 1724, 1744, 1748, 1752, 1764, 1912, 1924-25, 1907, 1911, 1930, 1931, 1932, 1940, 1942, 1978, 1979, 1986, 1988, 1998, 2007, 2012

Response:
See Response to Common Comments C.1, C.3, E.13, E.15, E.29, T.5, X.8 and X.12.

Comment:
Imposing a flat fee for signing agents is wrong.

Pages reflecting this comment:
1909

Response:
See Response to Common Comment N.1.

Comment:
Regulations will have a devastating effect on regional underwriters and independent title agents.

Pages reflecting this comment:
1935A

Response:
See Response to Common Comments C.9, T.7, T.18 and X.1.

Comment:
Title insurance should not be regulated like property and casualty insurance; it is unique.

Pages reflecting this comment:
1935A

Response:
See Response to Common Comment A.2, C.27, T.22, and X.2.

Comment:
The escrow business no longer involves simple transactions with each party performing its own functions. They now take on the duties that other entities used to handle and this takes extra time and results in additional liability.

Pages reflecting this comment:
1716, 1718, 1719, 1727, 1733, 1734, 1738, 1740, 1742, 1754, 1759-60, 1761, 1914, 1940

Response:
See Response to Common Comment E.12 and E.28.

Comment:
Regulations will have devastating impact on the title and escrow industries including ability of independent escrow companies to compete:

Pages reflecting this comment:
1730, 1731-32, 1741, 1746, 1775, 1930, 1931, 1946A, 2000, 2020

Response:
See Response to Common Comment E.1, and E.27.

Comment:
The regulations will hurt the real estate market and Notaries Public.

Pages reflecting this comment:
1972, 2009, 2010, 2011, 2012, 2018

Response:
See Response to Common Comment N.1.

Comment:

The regulations will result in State revenue loss due to Notaries' failure to renew their commissions.

Pages reflecting this comment:
1976, 2008

Response:
See Responses to Common Comment N.1.

Comment:
The regulations will cut costs for those signing loan documents but Notary Public signing agents are still liable for errors and omissions.

Pages reflecting this comment:
1976, 2008

Response:
See Responses to Common Comment N.1.

Comment:

The regulations will interfere with and possibly collapse an already fragile balance between buyers, sellers, escrow offers, brokers, lenders and title companies.

<u>Pages reflecting this comment:</u>
1930

<u>Response:</u>
See Response to Common Comments A.4, C.30 and C.33.

<u>Comment:</u>
The business is owned or operated by and will reduce the salaries of the:
- **Primary Breadwinner**
- **Woman**
- **Single mom**
- **Elderly**

<u>Pages reflecting this comment:</u>
1716, 1718, 1719, 1720, 1728, 1730, 1731, 1732, 1734, 1735, 1740, 1742, 1750, 1754, 1758, 1759-60, 1761, 1764, 1766, 1773, 1774, 1927, 1934, 1942, 1946A, 1978, 1979, 1980, 1981, 1992, 1994, 1996, 2007.

<u>Response:</u>
See Response to Common Comment E.14.

<u>Comment:</u>
Proposed regulations will not alleviate lack of competition in the industry/regulations are counterproductive.

<u>Pages reflecting this comment:</u>
1935B

<u>Response:</u>
See Response to Common Comment C.30, T.1 and X.1.

<u>Comment:</u>
- **If we want to protect the consumer, then instead of regulations the Dept. should find a way to enforce RESPA on both sides of the industry.**
- **The provisions of RESPA are commonly violated. While this is true for both title insurers and escrow companies, it is particularly true for controlled escrow companies. The proposed regulations will result in more controlled escrow companies in Southern California.**

Pages reflecting this comment:
1928, 1941

<u>Response:</u>

To the extent that this comment recommends that the Commissioner regulate entities involved in the real estate transaction that are outside of his regulatory authority, the Commissioner rejects this comment. The Department will continue to work with other enforcement agencies to coordinate the most effective approach to combating other fees that violate the Real Estate Settlement Practices Act.

Comment:
The proposed regulations should not be used for political gain.

Pages reflecting this comment:
1924-25, 1975

Response:
See Response to Common Comment X.19.

Comment:
Escrow Fees are the lowest of all the expenses/most cost effective part of the real estate transaction.

Pages reflecting this comment:
1735, 1738, 1740, 1741, 1749, 1754, 1764, 1766, 1906, 1914, 1978, 1980, 1981, 1994

Response:
See Response to Common Comment E.9 and E.26.

Comment:
Commenter is generally opposed to the regulations or opposes the reduction of fees by 27%.

Pages reflecting this comment:
1706, 1713, 1720, 1728, 1730, 1732-32, 1735, 1751, 1764, 1770, 1920, 1934, 1944, 1973, 1981, 1986, 1988, 1999, 2002, 2003, 2004, 2013, 2016, 2021.

Response:
The Commissioner rejects this comment. The commenter offers no evidence to support the claim that qualified companies providing good service will not be able to operate successfully under the regulations. To the contrary, the regulations require that charges will be permitted to be high enough to recover reasonable charges plus a reasonable profit. At the same time, the proposed regulations will permit the Commissioner to effectively ensure that title insurance and escrow charges will not be excessive. The Commissioner rejects the claim that no qualified businesses will be able to function under these conditions.

Comment:
How can the Department of Insurance regulate escrow companies when it is not insurance?

Pages reflecting this comment:

1927

<u>Response:</u>

The Department maintains regulatory jurisdiction over all charges, whether denominated premium or otherwise, when made to the public by a title insurer, an underwritten title company or a controlled escrow company for all services it performs in transacting the business of title insurance. To the extent that a controlled escrow company's charges fall within the definition of the "business of title insurance" as set forth in Insurance Code section 12340.3, those charges fall within the Department's regulatory control.

<u>Comment:</u>
Commissioner has no authority to set statewide rates for title insurance.

<u>Pages reflecting this comment:</u>
1735B

<u>Response:</u>

See Response to Common Comment A.3, A.4 and A.6.

<u>Comment:</u>

The Competition Report is flawed.

<u>Pages reflecting this comment:</u>
1718, 1935B, 1979

<u>Response:</u>

See Response to Common Comment C.6 and C.7. Also, see generally, Response to Common Comments C.1 through C.34.

<u>Comment:</u>
<u>The Commissioner should consider disclosure rather than fee reduction</u>

<u>Pages reflecting this comment:</u>
1934

<u>Response:</u>
See Response to Common Comment X.16.

<u>Comment:</u>
- **The Commissioner should focus on title fees.**
- **The Commissioner should focus on junk fees of title and escrow companies.**

Pages reflecting this comment:
1713, 1720, 1748

Response:
The Commissioner rejects this comment. Except to the extent that the fees of title and escrow companies fall within the definition of "miscellaneous charges" as set forth in Insurance Code section 12340.7, the proposed regulations do restrict title fees and so-called "junk fees." The regulations are intended, in general, to yield sufficient revenue to give the company the opportunity to cover its reasonable costs and to earn a fair profit. Costs are generally recognized on the basis of industry-average costs, which clearly provide that opportunity.
Where a company cannot cover its existing payroll or support its current spending on that basis, it suggests that the company may be over-staffed or insufficiently cost-conscious in its expenditures.
The notable departure from industry-average costs is in the area of sales, and it may well be that companies will not be able to support existing costs compensating sales personnel under the current regulation. However, the regulations are premised on the finding of a lack of competition, the presence of reverse-competition, and the effect of reverse-competition of driving up sales and "customer-service" costs. Denying companies the ability to pass such costs through to consumers is purposeful and appropriate.

Comment:
Should not punish the industry for the sins of a few.

Pages reflecting this comment:
1917, 1979, 1988, 2032

Response:
The Commissioner rejects this comment. Commenter has offered no evidence that particular companies will be relatively disadvantaged by the proposed regulations. It is not the purpose or effect of the regulations to give to, or take away from, companies any advantage they might have in a competitive market.

Comment:
The regulations will slash escrow and title fees.

Pages reflecting this comment:
1722, 1903

Response:

See Response to Common Comments T.5, T.6 and T.12.

Comment:
The regulations will increase title company fees to compensate for the lack of escrow fees.

Pages reflecting this comment:

1930

Response:
The Commissioner rejects this comment. The proposed regulations will not permit companies to increase fees without adequate support for of justified costs. The regulations are intended, in general, to yield sufficient revenue to give the company the opportunity to cover its reasonable costs and to earn a fair profit. Costs are generally recognized on the basis of industry-average costs, which clearly provide that opportunity.
Where a company cannot cover its existing payroll or support its current spending on that basis, it suggests that the company may be over-staffed or insufficiently cost-conscious in its expenditures.
The notable departure from industry-average costs is in the area of sales, and it may well be that companies will not be able to support existing costs compensating sales personnel under the current regulation. However, the regulations are premised on the finding of a lack of competition, the presence of reverse-competition, and the effect of reverse-competition of driving up sales and "customer-service" costs. Denying companies the ability to pass such costs through to consumers is purposeful and appropriate.

Comment:
The regulations jeopardize the integrity of the Notary Public market.

Pages reflecting this comment:
1905

Response

See Response to Common Comment N.1.

Comment:
Lawyers will take over escrow.

Pages reflecting this comment:
1930, 1981, and 1991.

Response

See Response to Common Comment X.15.

Comment:
The proposed regulations will negatively impact small business.

Pages reflecting this comment:
1706, 1709, 1720, 1724, 1735, 1746, 1917, 1919, 1931, 1932, 1979, 1996, 2010-11, 2036

Response

See Response to Common Comment T.7, T.18 and X.1.

Comment:
Transactions will be more susceptible to fraud, and increase the number of falsified real property transactions (because regulations will result in fewer Notaries Public).

Pages reflecting this comment:
1706, 1709, 1712, 1713, 1714, 1745, 1746, 1772, 1774, 1903-04, 1910, 1919, 1920, 1929, 1939, 1945, 1947, 1972, 1977, 1991, 1993, 2009, 2014, 2015, 2017, 2036.

Response

See Response to Common Comment N.1.

Comment:
Proposal to cut escrow fees is arbitrary and harmful because Notaries Public provide a critical public service/are an important tool in California's economy.

Pages reflecting this comment:
1901, 1980, 1909, 1912, 1919, 1929.

Response

See Response to Common Comment N.1.

Comment:
Notaries Public will be put out of work/regulations will reduce the number of available Notaries Public.

Pages reflecting this comment:
1709, 1714, 1739, 1744, 1745, 1752, 1768, 1770, 1771, 1772, 1901, 1903-04, 1919, 1920, 1922, 1923, 1931, 1936, 1947, 1973, 1976, 1977, 1993, 2000, 2003, 2004, 2005, 2008, 2009, 2021, 2032, 2036

Response

See Response to Common Comment N.1.

__Comment:__
The regulations will have a negative effect on Notaries Public and the public/will affect quality of Notary Public service/will create inconvenience to the consumer.

__Pages reflecting this comment:__
1771, 1772, 1774, 1906, 1907, 1908, 1912, 1917, 1920, 1923, 1929, 1936, 1939, 1942, 1947A

__Response__

See Response to Common Comment N.1.

__Comment:__
Consumers should have a choice regarding service and competitive pricing.

__Pages reflecting this comment:__
1771, 1773, 1911, 1912

__Response__

See Response to Common Comments C.30, N.1 and T.1.

__Comment:__
California does not need regulatory intervention in the free market for notary fees.

__Pages reflecting this comment:__
1983

__Response__

See Response to Common Comments A.4, C.30, C.33 and N.1.

__Comment:__
The proposed regulations will compel title insurance and escrow officers to stop using Notaries Public and instead use in-house services. This would have a detrimental effect on consumers/reduce the number of available Notaries.

__Pages reflecting this comment:__
1744, 1746, 1756, 1772, 1903, 1906, 1907, 1908, 1911, 1939, 1998, 2014, 2015

Response
See Response to Common Comment N.1.

Comment:
The proposed regulations will restrict Notaries Public from providing the mobile service that allows them to service at home for those who are:
- **Working**
- **Older**
- **Homebound**

Pages reflecting this comment:
1706, 1709, 1713, 1714, 1739, 1744, 1745, 1746, 1752, 1756, 1758, 1769, 1770, 1773, 1903-04, 1905, 1906, 1910, 1911, 1912, 1919, 1920, 1922, 1923, 1931, 1932, 1937, 1942, 1945, 1947, 1972, 1993, 2002, 2004, 2005, 2010, 2012, 2014, 2015, 2017, 2018, 2032, 2035, 2036.

Response

See Response to Common Comment N.1.

Comment:
Detrimental impact on Notary Public income causing hardship/Notaries Public deserve to be fairly compensated.

Pages reflecting this comment:
1724, 1728, 1737, 1743, 1744, 1770, 1910, 1920, 1923, 1931, 1932, 1933, 1939, 1942, 1947, 1973, 1993, 1998, 1999, 2012, 2015, 2018, 2032, 2036, 2039.

Response
See Response to Common Comment N.1.

Comment:
Regulations will deter others from pursuing the noble career as a Notary Public.

Pages reflecting this comment:
1724, 1768, 1773, 1901, 1910, 1913, 1947, 1993

Response
See Response to Common Comment N.1.

Comment:

- **Lender /broker/realtor fees should be targeted.**
- **The focus should be on the kickbacks given to the real estate agents and the mortgage brokers and title insurers.**

Pages reflecting this comment:

1740, 1759-1761, 1906, 1914, 1917, 1924-25, 1927-28, 1936, 1997, 2004.

Response

The Commissioner's statutory authority does not include the power to require banks and financial institutions to pay for title insurance. Similarly, the Commissioner lacks the power to regulate the fees charged by brokers or realtors.

See also Response to Common Comment E.8 and T.9.

Comment:

Support regulations to restrict escrow and subescrow fees.

Pages reflecting this comment:

1726

Response

Because these comments were not specifically directed at the proposed action or the procedures followed by the Commissioner in proposing or adopting the action or are in support of the regulations, no further response is necessary.

TITLE 10. INVESTMENTS
CHAPTER 5. INSURANCE COMMISSIONER
Article 7.1
TITLE INSURANCE STATISTICAL PLAN
AND RELATED RULES GOVERNING RATES AND CHARGES

Summary and Response to Technical Comments Received During 45-day Comment Period

Volume 5, Comment No. 1776-1900:

Commentator: Robert W. Hogeboom on behalf of the LandAmerica Title Insurance Group
Date of Comment: Received 8/30/06
Type of Comment: Written

Summary of Comment (page 1-4):

This passage summarizes the relevant status of the proposed regulations, the commenter's affiliation as well as the "Summary Conclusions" of the comments that are set forth in greater detail within the body of the comment.

Response to Comment:

This portion of the comment is not specifically directed at the Commissioner's proposed regulations or to the procedures followed in proposing the regulations. Additionally, this portion of the comment reflects summaries of comments that are summarized and responded to in greater detail below. No response is, therefore, necessary. (Gov. Code section 11346.9.)

Summary of Comment (page 4-5):

Cases in California demonstrate that if a regulation is outside of an agency's discretion, a court does not need to review the rulemaking action under the abuse of discretion standard because there is simply no discretion to abuse. Here, the ratemaking formula and interim-rate reduction provisions are fundamentally inconsistent with the title insurance regulatory scheme and the Commissioner has acted in excess of his authority.

Response to Comment:

The Commissioner rejects this comment. The proposed regulations lie squarely within the Commissioner's authority and do not conflict in any way with the applicable statutes.

Summary of Comment (page 5):

Insurance Code section 12401 describes the purpose of the title rate filing and regulation statutes. This provision establishes that the statutory scheme is designed to permit and encourage competition and that nothing in the statutory scheme is intended to authorize the Commissioner to fix and determine a rate level by classification or otherwise. Similarly, Insurance Code section 12401.5 provides that a statistical plan cannot fix, determine or in any way impair competitive rating or the free market. Because the ratemaking formula and interim-rate reductions fix rate levels, they violate these provisions of law.

Response to Comment:

The Commissioner rejects this comment. See Responses to Common Comments A.3 and A.4.

Summary of Comment (page 5-6)

As Shawna Ackerman explains in Exhibit A-1 to this comment, the ratemaking formula fixes rates by setting a maximum rate through the use of industry averages. Under the formula, every insurer who has expenses, losses, or related experience that is higher than the capped industry average will be forced to charge the maximum rate set by the Commissioner. On a related note, section 2357.5(b) sets the rate for a concurrent policy at $25 plus $0.10 cents per page. Similarly, with respect to the interim-rate reductions, proposed regulation sections 2357.19 and

2358.9 require title insurers and escrow companies to reduce their rates by 77 and 73 percent, respectively. This is clearly the "fixing" of rate levels in violation of Insurance Code section 12401.

Response to Comment

The Commissioner rejects this comment. The Commissioner addresses separately the comments contained in Exhibit A-1. The maximum charge for a concurrent policy does not "fix" the rate for such policy. Companies remain free to charge a lesser amount, which one may reasonably expect companies would do in a competitive market when selling a second policy with no greater coverage on the same property at the same time. Similarly, interim maximum rates are set at the same level the company would have charged for the same transaction in 2000, adjusted for increased costs, a level that leaves companies ample room to compete were they engaged in price-competition.

Summary of Comment (page 6)

The Legislature has barred the Commissioner from taking an active role in rate regulation. The Commissioner's authority over title insurance and related products is especially limited in connection with regulating escrow companies. The Department of Corporations licenses escrow companies.

Response to Comment

The Commissioner rejects this comment. The phrase "active role" does not appear in the statute, is undefined in this comment, and appears simply to be a conclusion of the commenter without basis. The fact that the Legislature has seen fit to place the rates of controlled escrow companies under the jurisdiction of the Department of Insurance while requiring licensure by the Department of Corporations is unremarkable and no reason to constrain the Commissioner from exercising his statutory authority.

Summary of Comment (page 6-7):

While the Commissioner may have the authority to determine when a rate is excessive, he cannot do so in a manner that interferes with competition or the free market. Nevertheless, even the Commissioner acknowledges that his regulations may have a significant statewide adverse economic impact with an estimated reduction in title revenue of $800 million. As Dr. Jared Hazleton explains in Exhibit B to this comment, this reduction in revenue will likely lead to job losses. Dr. Hazleton also explains that some title entities that remain in the business could be expected to reduce the quality of service they provide in order to make up for this lost revenue.

Response to Comment:

The Commissioner rejects this comment. See Response to Common Comment C.30. The responses to Exhibit B also address the contention that quality of service will decline due to the proposed regulations.

Summary of Comment (page 7 & 9):

The proposed regulations seek to impose a “prior approval” system on title entities, thereby conflicting with Insurance Code section 12401.1 and the provision that authorizes title entities to file their schedules of rates for use 30 days after filing. Exhibit C, attached to this comment, is an opinion of the Legislative Counsel which notes that the Commissioner has no authority to decline to approve rate schedules filed by title entities in order to stop them from going into effect as filed. The Legislative Counsel opinion states that the Commissioner cannot impose a “prior approval” rate regulatory system for rate schedules or title policy form filings. Moreover, at page 4 of the opinion, the Legislative Counsel concluded that the Commissioner cannot require title entities to justify their rates as a precondition to their use. The only way the Commissioner may stop a title entity from charging a filed rate is to issue a notice of noncompliance and hold a hearing.

Response to Comment:

The Commissioner rejects this comment. See Response to Common Comment A.2. Because the proposed regulations do not institute a prior-approval system or alter the file-and-use system, the attached opinion of the Legislative Counsel is irrelevant to the proposed regulations.

Summary of Comment (page 8):

The Legislature intended for title and escrow rates to be governed by a file and use system similar to the open competition McBride-Grunsky pattern of rate regulation. California case law establishes that the McBride-Grunsky system sought to achieve rates which were not excessive, inadequate or unfairly discriminatory through open competition rather than by state regulation. Although the open competition McBride-Grunsky Act was later repealed in part, through the voter-enacted Proposition 103, the title insurance statutes were not repealed.

Response to Comment:

See Response to Common Comment A.2.

Summary of Comment (page 10-11):

The case of *20th Century Insurance Company v. Garamendi* is materially distinguishable from the present case and does not, therefore, support the proposed regulations. Numerous cases, including the *20th Century* case, have recognized that the Commissioner’s authority under the McBride-Grunsky Act provisions is severely limited in scope. The *20th Century* case noted that while certain model legislation that the Court reviewed embodied a kind of ‘prior approval’ system where it would be appropriate to adopt regulations, the McBride Grunsky Act’s system set up the open competition system and “clearly did not contemplate adoption of rate regulations.” Thus, like the McBride Act, the open competition title insurance statutes do not provide for the adoption of rate regulations and the proposed regulations’ attempts to create interim-rates and a ratemaking formula are invalid on that basis.

Response to Comment:

The Commissioner rejects this comment. This comment appears, again, to confuse procedure and substance. The proposed regulations do not purport to alter the file-and-use procedure for title rates. They rely on *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 215 for guidance in implementing the statutory proscription on the charging of excessive rates, since the substantive prohibition is the same under both sets of legislation. In fact, the authority to adopt such regulations is express in the administration of the title laws, while that authority was only implied by Proposition 103.

Summary of Comment (page 11):

The proposed regulations conflict with Insurance Code section 12401.3 and the definition of "excessive." A rate is "excessive" for purposes of section 12401.3 if it is "unreasonably high for the insurance or other services provided." The ratemaking formula in the proposed regulations does not apply a standard of unreasonably high rates for services provided, as required by statute. Instead, the Commissioner contends that the market is structurally incapable of producing a reasonable rate due to reverse competition. This approach conflicts with the statute.

Response to Comment:

The Commissioner rejects this comment. The proposed regulations are specifically intended to, and do, aid in the determination of whether a given rate is unreasonably high for the insurance or other service provided, as prescribed in Insurance Code section 12401.3. The regulations identify all of the applicable components of the cost of providing the specific insurance or other service provided, add a reasonable profit term, and thereby determine the number above which the proffered rate would be excessive, permitting continued use of the rate if the filing specifies a number no greater.

Summary of Comment (page 11-12):
The Competition Report, by focusing on data from 2003 and 2004, selectively uses unrepresentative data concerning industry profitability and ignores important factors such as the cyclical nature of the real estate market. The approach used in the Competition Report thereby ignores risk, which is a central issue in determining profitability. As is set forth in the report by Dr. Hazleton, the evidence shows that title profits are either in line with or lower than profits earned by firms in other industries.

Response to Comment:

The Commissioner rejects this comment. The commenter has failed to provide any sound reason to believe that the cyclicality of the real estate market makes 2003 and 2004 irrelevant to the assessment of competitive conditions, particularly in a market in which the companies very seldom vary base rates and in which the dominant companies have remained the same for many years (except to the extent that one dominant company has been acquired by another). The commenter also fails to explain the relationship he perceives between competitive conditions and risk. There is no evidence that the riskiness of the title business has changed much over the years. The proposed regulations allow the company to recover in rates its expected losses. Other points raised in the Hazleton comments are addressed separately in this rulemaking file.

Summary of Comment (page 12):

The Commissioner contends that costs associated with marketing to intermediaries, such as real estate brokers, are passed on to consumers without any benefit in return. Contrary to what the Commissioner assumes, because most consumers are not likely to expend the time to educate themselves or shop for title products, consumers do benefit from the marketing of title to intermediaries.

Response to Comment:

The Commissioner has rejected this comment. See Response to Common Comment C.13.

Summary of Comment (page 12):

The Commissioner makes no effort to analyze the effect on rates if title entities marketed their products directly to the public, rather than through intermediaries. Dr. Hazleton has explained that such a marketing practice would involve increased costs to the general public. This fact invalidates the Commissioner's basis for concluding that title and escrow rates are "unreasonably high."

Response to Comment:

The Commissioner rejects this comment. See Response to Common Comment C.14

Summary of Comment (page 12):

While acknowledging that the proposed regulations will set the maximum rate at the industry average - a figure well below present rates, the Commissioner does not provide any justification for this approach. Moreover, the proposed regulations do not include any analysis to support the implicit conclusion that rates above the industry average are unreasonable. This decision is arbitrary and will effectively require every insurer to charge the industry average rate.

Response to Comment:

The Commissioner rejects this comment. See Response to Common Comment T.18.

Summary of Comment (page 12-13):

By relying almost exclusively on industry averages, the Commissioner has failed to give consideration to "past and prospective loss experience within and outside of this state" or "to a reasonable margin for profit and contingencies". Moreover, the proposed regulations do not account for the fact that a given title entity's expense provisions may differ from those of other title entities to reflect the operating methods of the person or entity. The failure of the proposed regulation ratemaking formulae to consider company-specific data or experience outside of California violates Insurance Code section 12401.3(b) and (c).

Response to Comment:

The Commissioner rejects this comment. See Response to Common Comment A.13.

Summary of Comment (page 13):

The ratemaking formula in the proposed regulations conflicts with Insurance Code section 12401.3, as Ms. Ackerman explains in Exhibits A-1 and A-2, because it ensures that some insurers will not be able to reflect the expenses associated with their operating methods.

Response to Comment:

The response to this comment is provided in responding to Exhibits A-1 and A-2.

Summary of Comment (page 13):

The proposed regulations violate the Insurance Code because they do not give consideration to a reasonable margin for profit. Instead, as Ms. Ackerman explains in Exhibits A-1 and A-2, the ratemaking formula effectively assumes that every insurer has the same investment income yield, cost of capital, as well as the same reserve and capital levels. Thus, the ratemaking formula will not provide all title entities with a reasonable margin for profit.

Response to Comment:

The Commissioner rejects this comment. As more fully explained in the response to Exhibits A-1 and A-2, the regulations do not necessarily assume that every insurer has the same values but rather that it is reasonable to provide for in rates for every insurer the average values for the specified variables. Regulation by formula based on industry-average costs has long been practiced by regulatory agencies and approved by the courts. That includes applying numerical values adopted in regulations to individual companies' hearings without giving those companies the opportunity to adjudicate the values. (See, e.g., *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216.)

See also Response to Common Comment T.18.

Summary of Comment (page 13):

In Exhibits A-1 and A-2, Ms. Ackerman demonstrates that, by using the statistical plan data to determine a maximum rate, the proposed regulations fix rates and rating and will likely impair the free market. The proposed regulations violate Insurance Code section 12401.5(d)(3), in this regard.

Response to Comment:

The response to this comment is provided in responding to Exhibits A-1 and A-2.

Summary of Comment (page 14-15):

In spite of the fact that Insurance Code sections 12414.14 through 12414.16 give title entities the right to a hearing to determine whether the statutory standards for "excessive" have been met, the proposed regulations attempt to bypass this right. This infringement upon title entities' rights is most clear in proposed regulation sections 2357.19 and 2358.9 because these sections expressly require licensees to stop using filed rates without the due process hearing protections set forth in the Insurance Code.

Response to Comment:

The Commissioner rejects this comment. See Response to Common Comment A.9.

Summary of Comment (page 15):

Title entities would not be able to obtain a hearing prior to their required date for compliance with the interim-rate reductions. This procedure violates Insurance Code section 12414.16.

Response to Comment:

The Commissioner rejects this comment. The regulatory procedure does not violate Insurance Code section 12414.16. A company wishing to disregard the interim maximum rate (or the maximum charge pursuant to sections 2357.5 or 2358.4 of the regulations) may file for some other rate, which would go into effect pursuant to the provisions of the Insurance Code. If the Commissioner commences an enforcement action, the company would be required to respond to the Department's contention that the filed rates are not in compliance with the law and, if it fails to do so, would be prohibited from using that rate and would be subject to the sanctions for a willful violation.

Summary of Comment (page 15):

Proposed regulations section 2359.2(b) would establish that an insurer has committed a willful violation of law if the insurer fails to reduce its premium after receiving a notice of noncompliance, notice of public hearing or order finding a rate violation. Thus, the proposed regulations permit the Commissioner to enforce his determination that a rate is excessive through the mere issuance of a notice of noncompliance.

Response to Comment:

The Commissioner rejects this comment. The insurer is reasonably assumed by law to be aware of the regulations. If it chooses to use a rate in excess of that permitted by the regulations, after receipt and in disregard of a notice or order which describes the manner in which the rate is in excess of the regulations, the violation will necessarily be knowing and willful.

Summary of Comment (page 15-16 & 19):

Because section 2657.2 of the proposed regulations conclusively deems excessive any rate that is above the maximum title insurance charge, the proposed regulations unlawfully shift the burden of proof to title entities. Thus, the only purpose of the hearing will be to determine whether the Commissioner's mathematical calculation of the maximum rate is proper. This will result in a procedure contrary to statute whereby the Commissioner will not meet his burden of proving the matters encompassed by the proposed regulations in an adjudicatory proceeding.

Response to Comment:

The Commissioner rejects this comment. The burden of proving the violation in the hearing remains with the Department. The fact that the violation may be more readily proven under the regulations than without them does not alter this fact.

Summary of Comment (page 16):

The Commissioner does not possess the authority to disapprove a filed rate. Thus, the interim-rate reduction serves no purpose, because under a file and use system title entities would be free to re-raise their rates after implementing the mandated rate reductions set forth in the proposed regulations.

Response to Comment:

The Commissioner rejects this comment. The comment goes not to the regulations but to the statutory file-and-use system. The commenter asserts that whenever the Commissioner orders a company to cease using a non-compliant rate, the company is at liberty simply to re-file that rate. The Commissioner disagrees that the statute permits such an action which, in any case, is irrelevant to the proposed regulations.

Summary of Comment (page 16):

The Commissioner admits that he cannot determine the reasonable cost of providing title insurance because the Department lacks the data to do so. As Ms. Ackerman explains in Exhibit A-1 and A-2, the proposed regulations are based on arbitrary decisions as to what title insurers should be charging. By way of example, the interim-rate reduction assumes that the Consumer Price Index is a proper measure of fixed cost trends for title insurance and real estate costs. The Consumer Price Index, however is a nationwide, rather than California-specific, measure of the change over time for prices paid for consumer goods such as food, housing and apparel.

Response to Comment:

The Commissioner rejects this comment. The Commissioner responds to the comments in Exhibits A-1 and A-2 elsewhere in this file. Specifically with respect to the assertion regarding the consumer price index, the Commissioner has determined that the selected data series is the most appropriate for this purpose, for reasons stated in the Staff Report on Interim Rates.

Summary of Comment (page 16):

The interim-rate reduction assumes that all title companies had a similar level of profit in the year 2000, a similar distribution of transactions across states and a similar average transaction amount by county. These assumptions are clearly erroneous and the Department possesses data that would demonstrate the error in these assumptions.

Response to Comment:

The Commissioner rejects this comment. The interim rates are based on the assumption that each company's 2000 rates yielded an expected profit that was satisfactory to that company. Were that assumption false, presumably the company would have filed for a rate change.

Summary of Comment (page 17-18):

Insurance Code section 12401.5 specifically provides that the regulations adopted by the Commissioner to implement the statistical plan must be "reasonable" and must not "conflict with the purpose and express intent of section 12401." Yet, the proposed regulations require the reporting of detailed information related to each individual policy. This statistical plan is without precedent in other states with detailed statistical plans such as Texas and New York, and will impose significant additional costs. By way of illustration, LandAmerica estimates that it will require 60,000 hours of incremental time per year to collect the data on each of the 360,000 policies that it writes per year. Assuming that this requires 29 associates at a cost of $40,000 per year, this would add more than $1.5 million in additional personnel expense. As Deborah Pace Thorsvik explains in Exhibit D to these comments, the statistical plan is too burdensome to meet any reasonableness standard.

Response to Comment:

The Commissioner rejects this comment. The Commissioner responds to Exhibit D separately in this file. See Response to Common Comment T.7.

Summary of Comment (page 18):

The proposed regulations fail to give due consideration to the rules and the form of the statistical plan used for these rating systems in other states. The Legislature, in section 12501.5(b), showed its concern that the statistical plan should be as uniform as practicable among the several states. The proposed regulations, however, make no effort to maintain consistency with other states' reporting requirements.

Response to Comment:

The Commissioner rejects this comment. See Response to Common Comment A.12.

Summary of Comment (page 18-19):

Dr. Hazleton explains in Exhibit B that the statistical plan will impose significant costs for title entities, including costs to revise their general ledger systems and computer systems, convert their financial databases to the new format, institute timecard systems to identify costs for specific tasks and collect data on individual policies and claims. The initial cost of implementing the statistical plan is likely to be in the tens of millions for major insurers and in the millions for underwritten title companies. This breadth of information requested by the proposed regulations demonstrates that the Commissioner intends to use the statistical plan to implement a prior approval type of rating system. Moreover, the statistical plan threatens to impair competition and the free market, particularly for the smaller companies, by adding new burdens and costs. The proposed regulations, therefore are outside of the scope of Insurance Code section 12401.5

Response to Comment:

The Commissioner rejects this comment. The Commissioner responds elsewhere in this file to the comments contained in Exhibit B. See also, Response to Common Comment T.7.

Summary of Comment (page 19):

The finding that a reasonable degree of competition does not exist is supposed to be made at the same time that the determination of excessiveness is made. Insurance Code section 12401.3 clearly contemplates that these findings will relate to the current condition of the market, rather than to the time that the regulation was adopted.

Response to Comment:

The Commissioner rejects this comment. The degree of competition in the relevant markets is definitionally an industry-wide finding; consigning it to adjudicatory hearings would lead to duplicative proceedings and potentially inconsistent results. And the degree of competition does not tend to materially change rapidly and has not changed significantly in recent years. To the extent the conditions change, the Commissioner may amend the regulation accordingly, which may be done in response to a rulemaking petition from any member of the public.

Summary of Comment (page 19):

By making the finding of no competition part of the proposed regulations, the Commissioner is unlawfully bypassing the applicable statutory procedures for making such a finding and eliminating title entities' right to challenge this finding in a hearing. The finding of no competition is an element of the finding that a rate is excessive. By making this finding in a rulemaking proceeding, he has unlawfully shifted the burden of proving excessiveness to title entities.

Response to Comment:

The Commissioner rejects this comment. See Response to Common Comment A.9.

Summary of Comment (page 20):

The proposed regulations, and in particular the Commissioner's finding regarding a lack of competition, fails the "necessity" standard as set forth in Government Code section 11349(a).

Insurance Code sections 12414.14 through 12414.16 require the Commissioner to use the quasi-adjudicatory hearing procedures to enforce the finding regarding a lack of competition. Additionally, as provided by statute, only the current condition of the market is relevant for purposes of the determination of a lack of competition. Thus, proposed regulation section 2355.6 has no effect and is not necessary.

Response to Comment:

The Commissioner rejects this comment. The commenter has proffered no basis for the assertion that Insurance Code sections 12401.14 through 12401.16 requires an adjudication of the finding of no reasonable degree of competition; indeed, the comment does not even point to any supporting language in any of the cited sections. Nor has the commenter provided any basis for the assertion that competitive conditions change so fast that the finding in a regulation would not remain valid.

See also Response to Common Comment A.9.

Summary of Comment (page 20):

The finding of no competition lacks evidentiary support. The Competition Report, upon which the finding of no competition is based, possesses major flaws which have been noted by at least three independent analyses. As Dr. Hazleton summarizes these analyses in Exhibit B, the flaws include, but are not limited to: 1) the use of a fifty-year old methodology that is no longer accepted by economists, 2) the superficial and sometimes misleading descriptions of key industry factors within the Competition Report, and 3) the fact that the Competition Report never addresses the question of what constitutes "reasonable" competition.

Response to Comment:

The Commissioner rejects this comment. The Commissioner responds to Exhibit B elsewhere in this file. The Commissioner has determined that the methodological objections are without merit and that the Competition Report employs methods used today by antitrust enforcement agencies, that the quantitative measures are appropriately used and interpreted, and that the report does, indeed, address the meaning of "reasonable competition."

Summary of Comment (page 20-21):

Dr. Hazleton explains in Exhibit B that the concerns expressed in the Competition Report about "reverse competition" in the title industry are based on three erroneous assumptions about the title market. First is the assumption that purchasers rely on intermediaries to select the suppliers of title products and that this in turn reduces competition. This assumption ignores the recognized principle in economics that it is not necessary for most consumers to be price sensitive or knowledgeable about the products offered in the market, so long as others who are price sensitive and knowledgeable are able to exert influence in the market. The title market possesses intermediaries that are able to exert influence such that title entities must compete based on price.

Response to Comment:

The Commissioner rejects this comment. The Commissioner responds elsewhere in the file to Exhibit B, including noting that the intermediaries to whom the comment refers have financial incentives and demonstrated behavior that refutes the claim that they exert downward influence on prices.

See also Responses to Common Comments C.10 through C.14.

Summary of Comment (page 21):

Dr. Hazleton explains in Exhibit B that the concerns expressed in the Competition Report about "reverse competition" in the title industry are based on three erroneous assumptions about the title market. The second erroneous assumption is that a structure which involves marketing to intermediaries does not benefit consumers. On the contrary, consumers save time and expense by not having to research the market themselves. It is clear that consumers value this service because consumers consistently choose not to conduct this research on their own. Moreover, the information gathered by intermediaries on behalf of the clients avoids a situation where sellers might be able to lower the quality of goods sold to the unknowing consumer while providing goods of a higher quality to knowledgeable consumers.

Response to Comment:

The Commissioner rejects this comment. The Commissioner responds elsewhere in the file to Exhibit B, including noting that consumers have neither the knowledge nor ability to comparison-shop for lower prices, that there is no evidence that consumers would prefer higher prices to whatever inconvenience of which intermediaries allegedly are without their knowledge relieving them, and that the intermediaries upon whom the comment relies have incentives to steer consumers away from lower-cost providers.

Summary of Comment (page 21):

Dr. Hazleton explains in Exhibit B that the concerns expressed in the Competition Report about "reverse competition" in the title industry are based on three erroneous assumptions about the title market. The third erroneous assumption is that marketing to intermediaries results in higher prices. This assumption is without evidentiary support and, as Dr. Hazleton notes, it is much more efficient and less costly to consumers for title entities to market products to knowledgeable intermediaries rather than consumers.

Response to Comment:

The Commissioner rejects this comment. The Commissioner responds elsewhere in the file to Exhibit B, including noting the substantial evidence of higher prices and the economic incentives intermediaries have not to steer consumers to lower-cost providers. Furthermore, the claim that it would not be efficient to market directly to consumers merely substantiates the finding of the absence of price-competition.

See also Responses to Common Comments C.10 through C.14.

Summary of Comment (page 21-22):

As Dr. Hazleton notes in Exhibit B, the fact that title entities have offered numerous rate reductions, citing competition as justification, shows that there is competition in the market.

Response to Comment:

The Commissioner rejects this comment. The Commissioner has responded to Dr. Hazelton's comments separately. In general, the claims of rate reductions are not credited because there is no evidence the reductions are widely available or widespread enough to introduce a reasonable degree of competition.

Summary of Comment (page 22):

Although the Competition Report makes a limited comparison of the major firms to show a lack of price differentiation, the data contained on the Department's website shows a much greater differentiation in pricing from, 16 percent above average to 8 percent below average.

Response to Comment:

The Commissioner rejects this comment. The commenter does not dispute the great similarity of pricing among the large firms. While other firms have filed more diverse rates, there is no evidence that these companies or this diversity has any effect on the prices consumers pay. On the contrary, the fact that none of the major firms finds it necessary to meet those prices is consistent with the finding of the absence of competition.

Summary of Comment (page 22):

The only major comprehensive study of the California title market, conducted by Joseph Real Brown in 1964, concluded that there was competition in the industry, marked by regular and aggressive attempts by sellers to differentiate their service from other sellers. These conclusions are confirmed by recent examinations by the Federal Trade Commission, which has conducted lengthy and intense investigations into mergers and acquisitions by major title insurers. Statements made by the FTC indicate that the title industry is competitive. This is supported by Dr. Hazleton's analysis which finds that the title market is structurally competitive and an environment in which prices are reasonable.

Response to Comment:

The Commissioner rejects this comment. The commenter's reliance on a 42-year-old study conflicts with the commenter's own objections to the vintage of more recent studies that reach contrary conclusions about competitive conditions. The Commissioner assumes the reference to FTC conclusions concerns that agency's approval of Fidelity's acquisition of Chicago Title. That decision was based on different factors under a different statute raising different issues; its conclusions, even on their own terms, has been impeached by the failure of the approved transaction to provide any consumer benefits.

Summary of Comment (page 22-23):

Because rate adjustments necessary to avoid confiscation are not available to individual insurers under the proposed regulations, the regulations effect an unconstitutional taking.

Response to Comment:

The Commissioner rejects this comment. See Response to Common Comment A.10.

SUMMARY AND RESPONSE TO COMMENT ATTACHMENTS

Exhibit A: "State Statistical Plan Comparison Chart"

Summary of Comment (page 1):
This is a one-page chart which identifies the differences between requirements found in the statistical plans in California, Texas and New York.

Response to Comment:

To the extent that this chart relates to the proposed regulations or the procedures followed in adopting the proposed regulations, the points have been summarized and responded to in the summary on pages 17 and 18, above.

Exhibit A-1: Untitled, prepared for the LandAmerica Financial Group by Shawna Ackerman signed and dated August 30, 2006.

Summary (page 1-2): The commenter summarizes her background and qualifications.

Response: Because this is not a comment specifically directed at the proposed regulation text, no response is required.

Summary (page 2-3): The commenter outlines her understanding of CIC 12401.3.

Response: Because this is not a comment specifically directed at the proposed regulation text, no response is required.

Summary (page 3): The commenter outlines Casualty Actuarial Society Ratemaking Principles.

Response: Because this is not a comment specifically directed at the proposed regulation text, no response is required.

Summary (page 4): The CDI acknowledges that it has not determined the reasonable cost of providing title insurance because it lacks the data to do so. The interim rate reduction is an industrywide rate reduction based on aggregated insurer data and does not consider the past and prospective loss and expense of an insurer. It does not consider a reasonable margin for profit and contingencies of an insurer. CIC 12041.3, by implication, requires considering company differences. The commenter is not aware of any jurisdiction that prepares a rate indication based on aggregate data and applies it to individual companies except those jurisdictions which promulgate rates.

Response: The proposed regulations have been amended so that the interim rate reduction is only a fallback if the stat plan is not in place by the specified date. If by 2009 sufficient data are not available to base rates on costs derived from the statistical plan, it is reasonable to implement the interim maximum rates to protect consumers from excessive rates while the statistical plan data are obtained. The rates in 2000 are those which the companies themselves chose to use. The rate reduction allows for increased claims and expenses in the year of the reduction, so profit levels will not be substantially affected. While the rate reduction itself is uniform, it is applied to each company's rates, so the reduced rates themselves will not be uniform, but rather will be different, based on starting rates that are not identical between companies.

Summary (page 5): The report assumes that setting a rate change based on approximately one-half of the aggregated industry data is appropriate for an individual company. Rate indications are typically analyzed at an individual insurer level. The report assumes that all title insurers had a similar level of profit in 2000 and that the 2000 profit level is a reasonable profit for rates in 2006 and 2007. The interim rate reduction assumes that the consumer price index is an appropriate measure for trends for title insurance fixed costs, primarily personnel, title plant maintenance and overhead. The CDI used a nationwide CPI for such things as food, housing and apparel, instead of a California specific trend in real estate costs.

Response: The proposed regulations have been amended so that the interim rate reduction is only a fallback if the stat plan is not in place by the specified date. While it is common for rate regulation to be based on company-specific data, it is also permissible to base rate regulation on industry-wide averages, and such systems have been approved by the courts for insurance and other industries. (E.g., 20th Century Ins. Co. v. Garamendi (1994) 8 Cal.4th 216; Permian Basis Area Rate Cases (1968) 390 U.S. 747.) The proposed regulations do not, as commenter asserts, assume that all title insurers had a similar profit level in 2000, but rather that all title insurers had profit levels that were satisfactory to them. The rates in 2000 are those which the companies themselves chose to use. The rate reduction allows for increased claims and expenses in the year of the reduction, so profit levels will not be substantially affected. The nationwide CPI is a reasonably close proxy for title insurer fixed costs, as more fully explicated in the Staff Report on Interim Rates. There is no reason to believe a trend in real estate costs is a reasonable proxy of personnel, title plant maintenance and overhead costs.

Summary (page 6): The interim rate reduction assumes each company has the same distribution of transactions across counties and the same average transaction amount by county. The CDI indicated rate change varies significantly by county. An insurer with a different by-county distribution should have a different indicated rate. The same is true for the escrow rate reduction, but the CDI has acknowledged that many UTCs operate only regionally.

Response: The interim rate reduction has been substantially revised. In the case of title rates, the commenter's reference to regional variations is rejected because the industry practice has long been to file statewide rates. The commenter has proffered no evidence that by-county distributions have changed significantly over time. The interim rate-reduction for escrow has now been modified to provide for regional variation, based on three regions that staff analysis has revealed to capture the principal differences in housing inflation. Thus, to the extent a controlled escrow company has different by-count rates, the interim rate-reduction will preserve those differences and simply lower each rate by a percentage appropriate to that region.

Summary (page 7): Is the sample size for the interim rate reduction large enough? The report does not indicate a margin of error or if there was any testing for convergence.

Response: This comment reveals a fundamental error by the commenter. The interim-rate calculations were based on all transactions during the specified periods. Thus there was no sampling and notions of sampling error are simply inapplicable.

Summary (page 8-9): In the maximum rate formula, only the retention rate is company specific. All other items are based on industry data. The statute requires consideration of individual company data. CIC 12401.3(c) states the expense provision in the rates may differ to reflect the operating methods of the insurer. The interim rate calculation recognizes that "fixed" expenses are subject to inflation, but the maximum rate calculation does not. Not adjusting for inflation fails to consider prospective expenses as contemplated by CIC 12401.3(b).

Response: The "system of expense provisions included in the rates for use by any title insurer, underwritten title company, or controlled escrow company" may, under the proposed regulations, differ from the system employed by other companies, and the Commissioner would take that fact into account when he or she examines a company's market conduct. However, the rate may not exceed the regulatory maximum, based in large measure on industry-average data. That basis is wholly appropriate, since the industry average costs are an appropriate basis for assessing reasonable costs. Such regulation on the basis of industry averages has long been approved by the courts for insurance and other industries. (E.g., 20th Century Ins. Co. v. Garamendi (1994) 8 Cal.4th 216; Permian Basis Area Rate Cases (1968) 390 U.S. 747.)

The commenter is incorrect that the maximum rate formula does not adjust for inflation. Section 2355.4(a) defines the "expense inflation factor." Section 2355.3(a) defines "Adjusted total," which includes application of the expense inflation factor. Section 2357.4 defines the "projected values", which use the adjusted totals. Section 2357.5 and following define the maximum title insurance charge, incorporating the projected values.

Summary (page 8, footnotes): The reference in 2357.3(ai)(1)(A) to "Report TI12, Line TI12.07" should be to TI03.27, case reserves and incurred loss adjustment expenses. It should also use TI03.22, losses paid. The CDI is also ignoring loss development.

Response: The Commissioner rejects this comment. The reference to Report TI12, Line TI12.07 is correct. Line TI12.07 references TI03.27 to explain the calculation of total loss and loss adjustment expenses, which includes losses paid. A typographical error in the text of TI03.27 was corrected. Loss development, as used for, say, private passenger auto, is not appropriate for determining ultimate title insurance losses because title insurers are unable to track policies in force over time. A title insurance policy remains in force unless and until the property whose title is insured is sold. Title insurers do not track when their policies are no longer in force due to property sales and, consequently, are unable to track exposures over time. Therefore, the approach used by the regulation -- a five year rolling average of losses to initial exposure -- is appropriate.

Summary (page 9): Section 2357.12 sets the sale cost factor at 15%. This does not consider expenses associated with title insurance.

Response: The Commissioner has found that the relevant markets are afflicted with reverse competition and an absence of a reasonable degree of competition. Given that finding, simply passing through to consumers the costs of reverse competition would be inappropriate. (E.g., 20th Century Ins. Co. v. Garamendi (1994) 8 Cal.4th 216, 289.)

Summary (page 9): A three-year average industry federal and state income tax rate is not company-specific or prospective.

Response: The three-year average for the industry is a reasonable proxy for a prospective tax rate. Use of the industry average is appropriate for the maximum title insurance rate, which applies to all companies.

Summary (page 9-10): The profit factor is comprised on industry average capital ratios and a selected rate of return reduced by industry average investment income. The rate therefore assumes that every insurer has the same investment income yield, the same capital gains yields, the same reserve and capital levels and the same cost of capital.

Response: The Commissioner rejects this comment. Regulation by formula based on industry-average costs has long been practiced by regulatory agencies and approved by the courts. Such a regulatory approach, including the use of formulas, was approved for property-casualty insurance under Proposition 103 was approved in 20th Century Ins. Co. v. Garamendi (1994) 8 Cal.4th 216. There is no material difference between the statutes in their definition of what constitutes an excessive rate.

Summary (page 10): The proposed regulations give no consideration to a reasonable margin for contingencies.

Response: Section 12401.3, subdivision (b) uses the phrase "profit and contingencies." "The Statement of Principles Regarding Property and Casualty Insurance Ratemaking" of the Casualty Actuarial Society defines the contingency factor as "a charge for any systematic variation of the estimated costs from the expected costs." There is no evidence whatsoever that for title insurance that such a charge should be anything other than zero. The overwhelming majority of rate filings that the Department receives for property-casualty insurance does not include an explicit non-zero charge for this systematic variation because of the paucity of evidence that such a variation exists.

Summary (page 10): A rate based on average expenses, profit and losses can not be the delimiter of an "unreasonably high (rate) for the insurance and other services provided".

Response: The Commissioner rejects this comment. The average expense for each component of the cost of providing the relevant product or service is, indeed, a reasonable estimate of that cost. In fact, given the absence of price-competition in this industry, the average is likely inflated above levels that would prevail in a competitive market. It can fairly be said that a company that finds it necessary to charge a rate intended to cover a level of costs above that which the industry as a whole has experienced is charging an unreasonably high rate for the insurance or other services provided.

Summary (page 11): The maximum rate is effectively rate setting. Insurers will all need to charge the maximum rate to cover their expected costs. The maximum rate is nothing more than the average rate, therefore every insurer who has expenses higher than the capped amount allowed or has losses higher than average or whose investment income is lower than average will have to charge the maximum rate. This rate will not provide a reasonable margin for profit and contingencies. It may result in rates that are below cost.

Response: It is simply not the case that disallowing an excessive rate – on an individual or formulaic basis – is fixing or determining rates. The commenter makes the erroneous assumption that a regulated firm is entitled to its actual expenses regardless of their reasonableness. Where a rate is excessive, the Commissioner is authorized to prohibit its use. Whether under a regulatory formula or ad hoc adjudication, the determination represents a finding of a cap above which the company's rate will be found to be excessive. That result is inherent in the Commissioner's statutory authority to prohibit excessive rates.

Summary (page 11): Section 2357.5(b) sets the rate for a concurrent policy at $25 plus $.10 per page. Section 2357.18 presents relativities for policy forms. This is rate setting.

Response: The Commissioner rejects this comment. Section 2357.5 specifies a maximum for concurrent policies. Companies are free to charge less. Given that the concurrent policy has less coverage and requires no new searching or other services, it is reasonable to assume that some companies will be able to provide concurrent policies at less than $25 plus $.10 per page and, in a competitive market, would do so.

The relativities provided in section 2357.18 are not required to be applied by title companies. They simply are inputs to the regulatory maxima. Companies may employ any relativity they choose so long as the resulting rate does not exceed the maximum permitted under the regulations.

Summary (page 11): The averages should only be used as guidelines or benchmarks. The proposition 103 regulations have "variances".

Response: The Commissioner rejects this comment. As the Supreme Court indicated in 20th Century Ins. Co. v. Garamendi (1994) 8 Cal.4th 216, 313, a properly constituted regulatory formula has the end-result "'safety' built in," and therefore does not require any other variances or "safety valves."

Summary (page 12): There will be considerable ongoing expenses to complying with the statistical plan. Many of the data elements are not currently collected in any state. This additional expense will not be reflected in the initial statistical calls. The regulations are in conflict with CIC 12401.5(d) because they fix rates and impair the free market.

Response: The Commissioner rejects this comment. The Commissioner has determined that the statistical plan is reasonable and does not conflict with the intent of Insurance Code section 12401.5. The reporting of details regarding each company's operations is required because the Commissioner has determined that existing reporting is inadequate. The Commissioner has considered the rating systems employed in other states and found them to be inadequate to California's needs. In part, those needs are identified in the calculations prescribed in the proposed regulations. The needs are further informed by the inadequacies of current reporting and the inadequacies of companies' responses to two data calls promulgated in part to assess the reasonableness of rates. In addition, the other states' rating systems do not provide sufficient information to facilitate examination and auditing of companies' data.

The proposed regulations do not "fix" or "determine" rate levels. They define the level above which the rate is excessive. Companies are free to compete by charging any rate they wish so long as the rate is not "excessive." (Ins. Code § 12401.3.) It has long been understood that the code authorizes the Commissioner to prohibit excessive rates and that doing so does not constitute the proscribed fixing or determination of rates.

Summary (page 12-13): The commenter summarizes her comments.

Response: As they are already responded to above, no additional response is necessary.

Summary (page 13 and footnote): If the regulations have the intended effect of furthering a competitive market, they will no longer be necessary.

Response: The regulations address the problems faced by consumers because of the absence of competition. At the same time, the regulations cannot change the basic reverse-competitive structure of title and escrow insurance markets. Consequently, the regulations by themselves cannot transform title and escrow markets into a competitive structure that eliminates the need for the regulations.

Exhibit A-2: Untitled, prepared for the LandAmerica Financial Group by Shawna Ackerman signed and dated August 30, 2006.

Commenter: Shawna Ackerman, 1-2

Summary: The commenter summarizes her background and qualifications.

Response: Because this is not a comment specifically directed at the proposed regulation text, no response is required.

Commenter: Shawna Ackerman, 2-3

Summary: The commenter outlines her understanding of CIC 12401.3.

Response: Because this is not a comment specifically directed at the proposed regulation text, no response is required.

Commenter: Shawna Ackerman, 3-4

Summary: The commenter outlines Casualty Actuarial Society Ratemaking Principles.

Response: Because this is not a comment specifically directed at the proposed regulation text, no response is required.

Commenter: Shawna Ackerman, 5-6

Summary: In the maximum rate formula, none of the data elements is company specific. Several items are based on industry data, several are not specific to escrow but incorporate title and one component is set by the department. The statute requires consideration of individual company data. CIC 12401.3(c) states the expense provision in the rates may differ to reflect the operating methods of the company. The interim rate calculation recognizes that "fixed" expenses are subject to inflation, but the maximum rate calculation does not. Not adjusting for inflation fails to consider prospective expenses as contemplated by CIC 12401.3(b).

Response: The "system of expense provisions included in the rates for use by any title insurer, underwritten title company, or controlled escrow company" may, under the proposed regulations, differ from the system employed by other companies, and the Commissioner would take that fact into account when he or she examines a company's market conduct. However, the rate may not exceed the regulatory maximum, based in large measure on industry-average data. That basis is wholly appropriate, since the industry average costs are an appropriate basis for assessing reasonable costs. Such regulation on the basis of industry averages has long been approved by the courts for insurance and other industries. (E.g., 20th Century Ins. Co. v. Garamendi (1994) 8 Cal.4th 216; Permian Basis Area Rate Cases (1968) 390 U.S. 747.)

The commenter is incorrect that the maximum rate formula does not adjust for inflation. Section 2355.4(a) defines the "expense inflation factor." Section 2355.3(a) defines "Adjusted total," which includes application of the expense inflation factor. Section 2358.3 defines the "projected values", which use the adjusted totals. Section 2358.4 and following define the maximum escrow charge, incorporating the projected values.

Commenter: Shawna Ackerman, 5, footnotes

Summary: The projected escrow loss component in section 2358.5(d) is not defined. There is a total loss escrow factor defined in 2358.2(z) which refers to Report TI03, Line TI03.31. There is a typo in the description of Line TI03.31 inasmuch as it sums itself. It appears the intent is to use the industry average loss for one year to project the escrow loss component of the maximum charge. The interim maximum rate calculation used a two-year average.

Response: There is no 2358.5(d). It is unclear what typo the commenter is referring to in the description of Line TI03. The commenter is correct that the maximum charge formula includes an escrow loss and loss settlement provision based on a one-year industry average. The interim rate calculation used 1% as the escrow loss provision based upon a review of two years of industry average experience.

Commenter: Shawna Ackerman, 6

Summary: Escrow companies operate regionally. Cost differences by county are not reflected when using averages. The escrow relativity factor in section 2358.7 is not explained or supported, nor does it necessarily address the cost differentials. They may reflect historical differences in charges, but not rent and salaries. Rents and salaries in Los Angeles are not twice as much as in San Francisco.

Response: The relativities contained in the proposed regulations were derived from review of rates companies have filed with the Department. In the absence of reliable cost data, this is the best basis available for determining appropriate relativities at this time. However, it is reasonable to assume that data from the statistical plan will shed additional light on regional and other cost differentials and that the relativities will be revisited at that time.

Commenter: Shawna Ackerman, 6

Summary: Section 2357.12 sets the sale cost factor at 15%. This does not consider expenses associated with escrow services.

Response: The Commissioner has found that the relevant markets are afflicted with reverse competition and an absence of a reasonable degree of competition. Given that finding, simply passing through to consumers the costs of reverse competition would be inappropriate. (E.g., 20th Century Ins. Co. v. Garamendi (1994) 8 Cal.4th 216, 289.)

Commenter: Shawna Ackerman, 6-7

Summary: A three-year average industry federal and state income tax rate is not company-specific or prospective.

Response: The three-year average for the industry is a reasonable proxy for a prospective tax rate. Use of the industry average is appropriate for the maximum escrow charge, which applies to all companies.

Commenter: Shawna Ackerman, 7

Summary: The profit factor is comprised on industry average capital ratios and a selected rate of return reduced by industry average investment income. The rate therefore assumes that every insurer, underwritten title company and escrow company has the same investment income yield, the same capital gains yields, the same reserve and capital levels and the same cost of capital.

Response: The Commissioner rejects this comment. Regulation by formula based on industry-average costs has long been practiced by regulatory agencies and approved by the courts. Such a regulatory approach, including the use of formulas, was approved for property-casualty insurance under Proposition 103 was approved in 20th Century Ins. Co. v. Garamendi (1994) 8 Cal.4th 216. There is no material difference between the statutes in their definition of what constitutes an excessive rate.

Commenter: Shawna Ackerman, 7

Summary: The proposed regulations give no consideration to a reasonable margin for contingencies.

Response: Section 12401.3, subdivision (b) uses the phrase "profit and contingencies." "The Statement of Principles Regarding Property and Casualty Insurance Ratemaking" of the Casualty Actuarial Society defines the contingency factor as "a charge for any systematic variation of the estimated costs from the expected costs." There is no evidence whatsoever that for escrow companyes that such a charge should be anything other than zero. The overwhelming majority of rate filings that the Department receives for property-casualty insurance does not include an explicit non-zero charge for this systematic variation because of the paucity of evidence that such a variation exists.

Commenter: Shawna Ackerman, 7

Summary: A rate based on average expenses, profit and losses can not be the delimiter of an "unreasonably high (rate) for the insurance and other services provided".

Response: The Commissioner rejects this comment. The average expense for each component of the cost of providing the relevant product or service is, indeed, a reasonable estimate of that cost. In fact, given the absence of price-competition in this industry, the average is likely inflated above levels that would prevail in a competitive market. It can fairly be said that a company that finds it necessary to charge a rate intended to cover a level of costs above that which the industry as a whole has experienced is charging an unreasonably high rate for the insurance or other services provided.

Commenter: Shawna Ackerman, 8

Summary: The maximum charge is effectively rate setting. Companies will all need to levy the maximum charge to cover their expected costs. The maximum rate is nothing more than the average rate, therefore every company who has expenses higher than the capped amount allowed or has losses higher than average or whose investment income is lower than average will have to charge the maximum rate. This rate will not provide a reasonable margin for profit and contingencies.

Response: It is simply not the case that disallowing an excessive rate – on an individual or formulaic basis – is fixing or determining rates. The commenter makes the erroneous assumption that a regulated firm is entitled to its actual expenses regardless of their reasonableness. Where a rate is excessive, the Commissioner is authorized to prohibit its use. Whether under a regulatory formula or ad hoc adjudication, the determination represents a finding of a cap above which the company's rate will be found to be excessive. That result is inherent in the Commissioner's statutory authority to prohibit excessive rates.

Commenter: Shawna Ackerman, 8

Summary: The averages should only be used as guidelines or benchmarks. The proposition 103 regulations have "variances".

Response: The Commissioner rejects this comment. As the Supreme Court indicated in 20th Century Ins. Co. v. Garamendi (1994) 8 Cal.4th 216, 313, a properly constituted regulatory formula has the end-result "'safety' built in," and therefore does not require any other variances or "safety valves."

Commenter: Shawna Ackerman, 8-9

Summary: The commenter summarizes her comments.

Response: As they are already responded to above, no additional response is necessary.

Commenter: Shawna Ackerman, 9 footnote

Summary: If the regulations have the intended effect of furthering a competitive market, they will no longer be necessary.

Response: The regulations address the problems faced by consumers because of the absence of competition. At the same time, the regulations cannot change the basic reverse-competitive structure of title and escrow insurance markets. Consequently, the regulations by themselves cannot transform title and escrow markets into a competitive structure that eliminates the need for the regulations.

Exhibit B: “Economic Issues Raised by Proposed Changes in the Regulation of Title Insurance in California,” prepared by Dr. Jared E. Hazleton, dated August 28, 2006.

This report is also attached in Volume 10 as attachment 4 to the comments of Shawna Ackerman on behalf of Land America Financial Group. See Volume 10 for a full response to this report.

Exhibit C: “Title Insurance - #20786,” prepared by the Office of Legislative Counsel, dated December 4, 2000.

To the extent that the commenter references Exhibit C within the body of his comment, the Department has summarized and responded to those comments above.

Exhibit D: Untitled, prepared for LandAmerica family of underwriters, underwritten title companies and other California affiliates by Deborah Pace Thorsvik, dated August 28, 2006.

Summary of Comment, Bates Page 1897: Generally, compliance with the Statistical Plan will require numerous changes to our systems and processes, will take many calendar months and would be very costly to establish and maintain. The Statistical Plan far exceeds reporting requirements of any other state for which LandAmerica submits an annual statistical plan. Compliance will cause our costs to increase and force rates up for California consumers.

Response: The Commissioner rejects this comment. The information required in the proposed regulation is either information routinely collected by underwritten title companies, information that should be routinely collected as part of sound business practice or information required by statutory requirement. The commenter has not identified any specific data elements that are difficult to collect or report, but has only provided vague complaints about the data reporting requirements. In addition, the Commissioner has extended the implementation of the reporting requirements by a year to ease the burden on reporting companies and to enable reporting companies to modify existing systems in the ordinary course of business. LandAmerica, like Fidelity, First American and Stewart, have affiliates that develop and deploy transaction management software for participants in the real estate business, including title agents, title insurers, real estate agents, lenders and others. The purpose of this software is to track transactions in real time and assist participants in carrying out the transactions by carrying out functions and adding information electronically. There are also independent vendors providing such transaction management software including Hall Settlement Systems and TSS Corporation. It is unreasonable to expect that LandAmerica, which can develop and deploy such transaction management software, is not in a position to utilize that same type of software to capture basic information about its own title and escrow transactions. The commenter is incorrect that the proposed statistical plan far exceeds that of all other states. The states of New Mexico, Texas and Florida all have statistical reporting requirements that are very detailed and similar to the proposed statistical plan. In addition, at least Texas and Florida have found even their existing detailed reporting to be inadequate as Texas issued a special data call with hundreds of questions in the past two years and Florida is issuing a revised and more detailed request for data. While the introduction of any new reporting requirement brings a new cost, the proposed reporting requirements have been designed to minimize the cost to reporting companies while providing the Commissioner with information essential for rate regulation. The proposed statistical plan is designed to specifically avoid the need to issue special data calls in the future which are very costly to reporting companies and do not produce data as reliable as data reported pursuant to a routine statistical plan. Further, the statistical plan has been revised to eliminate the reporting of data elements in Tables TI01 and UTC01 that LandAmerica, as well as other title insurance companies and underwritten title companies have said are difficult to collect. Finally, the cost of compliance is modest compared to the greater than $4 billion in revenue for the title and escrow industry in California.

Summary of Comments, Pages 1897 to 1890: The commenter identifies some specific examples of their general comments to reinforce their conclusions.

Response: The comment repeats the general comments summarized above and responded to above. It is not necessary to repeat the responses.

Commentator: Bruce Stangle & Bruce Strombom on behalf of First American Title Insurance Company
Date of Comment: Received 8/29/06
Type of Comment: Written
Bates Pages 1949-1971

This report was also attached as Exhibit A to the comments of Ronald J. Blitenthal on behalf of the American Guaranty Title Insurance Company. The response to this report is found in Volume 1.

Volume 5, Comment No. 2022-2031:

Commentator: Ted C. Jones, Chief Economist – Stewart Title Guaranty Company
Date of Comment: Received 8/29/06
Type of Comment: Written

Summary of Comment (bates page 2022):

The proposed regulations seek to regulate title premium rates based upon an incorrect perception that there is a lack of competition in the title industry. The assumption is based upon a biased and non-conclusive study. There are 75 agents in the Los Angeles area alone.

Response to Comment:

The Commissioner rejects this comment. The competition report found few title insurer entries and, because of mergers and acquisitions, a reduction in the number of title insurance groups over the past ten years. The competition report also found few new underwritten title companies entering the market, that new entries were uniformly affiliated business arrangements that added no new capacity to the system and many acquisitions of independent underwritten title companies by national title insurance groups with the overall result that the number of underwritten title companies has decreased and the market share of the top underwritten title companies affiliated with national title insurance groups has increased over the past ten years.

Moreover, the commenter has failed to provide any evidence that the agents located in Los Angeles County or elsewhere provide any new source of price-competition. The largest number of entries and exists are found among independent escrow companies. However, the Commissioner has found that the largest independent escrow companies -- those with the greatest number of branch offices -- are, in fact, affiliated with title insurance companies or other entities in the position to refer business to underwritten title companies or title insurance companies. Most important, the evidence suggests that most entries are existing firms that offer no price-competition. Despite hundreds of independent escrow companies operating in six Southern California counties, escrow prices in those counties remain essentially the same as escrow prices in other Southern California counties where escrow service is provided by a small number of underwritten title companies and twice the prices in Northern California where escrow services are provided by a fewer than three dozen underwritten title companies even in the most populous county.

Many of the new entries turn out to be controlled business arrangements, such as realtors forming an alliance with title insurers to facilitate the payment of high fees for steering business. The observation of market-exits is likewise unpersuasive. Many of the exits were, in fact, buy-outs of existing firms to eliminate competition, often by paying very high amounts to take over the seller's business. The commenter has offered no evidence that the observed market exits reflect increased competition – or even that they do not reflect reduced competition.

Summary of Comment (page 2022):

The proposed regulations seek to regulate rates for title, escrow and sub-escrow and endorsements by setting a ceiling for those services. Many of the proposed methodologies, data sources and assumptions regarding acceptable rates of return are not appropriate.

Response to Comment:

The Commissioner rejects this comment. The regulations define the level above which a rate is excessive. Companies are free to compete by charging any rate they wish so long as the rate is not "excessive." (Ins. Code § 12401.3.) It has long been understood that the code authorizes the Commissioner to prohibit excessive rates and that doing so does not constitute the proscribed fixing or determination of rates.

To the extent that the commenter identifies the particular aspects of the regulations that he deems inappropriate, those comments on the methodologies, data sources and assumptions are summarized and responded to below.

Summary of Comment (page 2022):
The interim rate reductions propose a 23 percent reduction for an owner's policy, a 16 percent reduction for refinance and a 27 percent reduction for escrow. The interim rate reductions' application to rates from 2006 to 2008 is objectionable, because it is not supported by statistical analysis and would ignore current real estate market conditions.

Response to Comment:

The Commissioner rejects this comment. On November 27, 2006, the Commissioner noticed revisions to the regulations, including revisions to the interim rate reductions. The interim rate reductions do not take effect – if ever – until 2008. Moreover, the reduction for owners' policies, refinance and escrow have been revised and refined to take into account regional differences for escrow and differences in transaction type for title insurance. The revised regulations also take into account the potential impact of current real estate market conditions and make adjustments to the interim rate reductions in appropriate circumstances. The revised regulations represent a necessary and proper method for the regulation of title and escrow rates.

Summary of Comment (page 2022)

The Department supports its interim rate reductions, in part, on the fact that title premiums and revenues rise as home prices rise. While this is true to an extent, title insurance premium increases are a much lower percentage than price increases. The Commissioner should examine more than just changes in home price in order to determine the impact on premium. The change in individual premiums per transaction and the change in transaction volume must also be considered, in addition to the cost of inflation.

Response to Comment
The Commissioner rejects this comment. The interim rate reductions are set forth in sections 2357.19 and 2358.9 are intended as an interim measure of rate regulation. While these sections do take into consideration more than changes in home price, the interim rate reductions focus solely on the sharp increase in average prices, not the transaction volume. To the extent that the sharp increase in transaction volume from 2000 to 2005 has negatively impacted consumers, these sections do not provide relief. The permanent rate regulatory formula and statistical plan, on the other hand, will collect information concerning the individual premiums per transaction and the change in transaction volume.

Summary of Comment (page 2022)

Automation causes companies to convert variable costs into fixed costs. As fixed costs increase in proportion, transaction volume becomes more important. When an industry has substantial fixed costs, the costs of the individual components of revenue per transaction become less important. Instead, the total revenue (or the income per transaction times the number of transactions) becomes the important inquiry.

Response to Comment

As explained in the response directly above, the interim rate reductions are designed as a stop gap measure and focus solely on the dramatic increase in transaction volume since 2000. The effect of the industry's conversion of variable costs into fixed costs are not relevant to the interim rate reductions, but will be considered by the statistical plan and permanent rate regulations. If the regulated licensees provide valid information for the statistical plan in 2008 and the Commissioner is able to publish those factors necessary to implement the permanent rate regulations, then the permanent rate regulations will become the controlling regulations and the interim rate reductions will not take effect.

Summary of Comment (page 2022):

The cost of automation is a tremendous expense that does not end. Therefore the additional investment necessary to meet the future increases the amount of return needed in order to justify the investment in automation in a cyclical environment.

Response to Comment:

The Commissioner rejects this comment. The Commissioner believes automation has lowered the cost of providing title search, examination, underwriting and policy production. It is clear that far less time is needed to search a title history when the records are available almost instantaneously on a computer than from searching through paper records. It is clear that far less time is needed to produce a title policy when the policy is printed from a software template than from typing in individual information into a paper form. The problem is that the savings from automation have not been received by consumers in reduced prices, but have been passed on to the referrers of title business through additional services, as described by escrow company representatives at the August 30 hearing and in their written testimony.

Summary of Comment (page 2022-2023):

Any analysis of the economic landscape should obtain a perspective of the events of today and the future, rather than a historical perspective. As the DataQuick data from July 2005 to July 2006 show, when an initial downward cycle begins for real estate, only the best and most expensive homes continue to sell, which gives the illusion that property values are still increasing when in fact a downward price trend is occurring. The DataQuick data reveal that sales are down 27.9% year over year. Three of the top 15 markets in California are already demonstrating a decline in prices.

Response to Comment:
The Commissioner rejects this comment. On November 27, 2006, the Commissioner noticed revisions to the regulations, including revisions to the interim rate reductions. The revised regulations take into account the potential impact of current and future real estate market conditions and make adjustments to the interim rate reductions in appropriate circumstances. The revised regulations represent a necessary and proper method for the regulation of title and escrow rates.

Summary of Comment (page 2023):

A calculation of the total impact on revenues and profitability requires the person conducting the analysis to obtain informed input on four factors: 1) the income per transaction; 2) the number of transactions; 3) the expense per transaction and relative relationship between fixed and variable costs and 4) inflation.

Response to Comment:
The Commissioner rejects this comment. The interim rate reductions are set forth in sections 2357.19 and 2358.9 are intended as an interim measure of rate regulation. While these sections do take into consideration more than changes in home price, such as inflation, the interim rate reductions focus solely on the sharp increase in average prices, not the transaction volume. To the extent that the sharp increase in transaction volume from 2000 to 2005 has negatively impacted consumers, these sections do not provide relief. The permanent rate regulatory formula and statistical plan, on the other hand, will collect information concerning the individual premiums per transaction, the change in transaction volume, the expense and relationship between fixed and variable costs per transaction and inflation.

Summary of Comment (page 2023-2026):
While the Department assumes that rising home prices result in an increase in revenue per transaction, this is not always true. A review of the median prices for a number of California cities, taken from the Department's premium comparison survey in July 2005 and July 2006 shows that real estate price increases do not always result in a rise in revenues.

For example, in Los Angeles a 6.1 percent home price increase resulted in a 3.9 percent premium increase. At the same time, however, the actual inflation-adjusted impact of the rising price is a negative 1 percent over the 2005-2006 period because Los Angeles had an inflation rate of 4.97 while the national rate for that same time period was 4.1 percent.

By converting the data into total revenue based on transactions, we find that revenues decline substantially. Even though revenue per transaction rose 3.9 percent year over year due to the increase in home price, a 22 percent drop in revenue occurred because of the declining number of sales. This revenue decline increases to 26%, when we account for the 4.97% rate of inflation. A similar analysis is reflected in the table on bates page 2026.

Response to Comment:
The Commissioner rejects this comment. The regulations take average inflation into consideration. Given that title rates have been set by title insurers without any regulatory control in an uncompetitive market, the suggestion that such rates were somehow inadequate to compensate for the unique variations in inflation for counties such as Los Angeles are unfounded. Moreover, the proposed regulations provide for a possible decline in 2009 home prices from 2006 and reduce the interim-rate reduction proportionately. The decline in transaction volume is, as noted above, irrelevant to the proposed regulations.

Summary of Comment (page 2027):

While the Department's interim rate reduction formulae assume that a base year of 2000 represents a year of adequate return to the title industry, this is a false assumption. By using the year 2000 as the base year, the regulations will keep rates perpetually and unreasonably low and consequently drive down competition and incentive for investment in the industry.

Response to Comment:

The Commissioner rejects this comment. As explained above, if the rates in 2000 were anything other than satisfactory to companies, they could have filed for and obtained rate increases. The fact that they did not is a clear basis for finding that the 2000 rate were reasonable. The year 2000 was, indeed, carefully selected – not because of any asserted poor performance by the companies but because that year marked the beginning of the sharp increase in housing prices. Since the sole purpose of the proposed regulations is to offset the increase in title premiums and other charges due solely to housing inflation that exceeded the cost of providing the insurance or other services, the selection of 2000 is entirely appropriate.

Summary of Comment (page 2027):
When developing the interim rate reductions, the Department failed to consider that, in some California markets, the inflation factor explains more than half of the increase. Using Metropolitan Statistical Areas from the US Department of Labor, a comparison of the San Francisco, Los Angeles-Riverside-Orange County and San Diego regions of the state show that two out of three markets had greater price increases than the rest of the US, but that inflation explained more than half of the 29 percent increase in premiums from 2000 to 2005.

Response to Comment:

The Commissioner rejects this comment. The interim rate reductions are set forth in sections 2357.19 and 2358.9 are intended as an interim measure of rate regulation. The regulations do take into account changes in premium due to inflation. The permanent rate regulatory formula and statistical plan will also collect information concerning inflation.

Summary of Comment (page 2027-2029):

The Home Mortgage Disclosure Act summarizes the actual number of residential mortgage loans, by state, including a delineation of whether the loans were a new purchase or a refinance. The reports by the Mortgage Bankers Association for 2005 show that refinancings rose from 31.7 percent in 2000, then peaked at 75.9 percent in 2003 and fell to 59.2 percent in 2004. The monthly forecast conducted by Fannie Mae predicts that refinances will decline from 52.2 percent of all loans in 2004 to 39.9 percent in 2006, and to 31.8 percent in 2007. This trend shows that there has been a significant reduction in refinance activity and a likelihood of substantial declines in the future.

Response to Comment:
The Commissioner rejects this comment. Changes in the percentage of loans attributable to refinancings are irrelevant. Again, the transaction volume itself is irrelevant to the interim rate provisions of the proposed regulation, which merely offset the increases in housing prices, not

transaction volume, since 2000. The proposed regulations did not attempt to recapture for consumers the savings that might have been attributable to sharply higher transaction volume since 2000, so there is no reason to take the much smaller declines in transaction volume since 2006 into account – and the proffered tables do not even demonstrate any decline in transaction volume, merely in the percentage mix of sales and refinancings.

Summary of Comment (page 2029-2030):

In summary, the title insurance industry has experienced a substantial reduction in total revenues for its core real estate transactions over the last 12 months. While inflation has offset some of this reduction, it has not offset the entire reduction. Refinance and home sales are expected to decline significantly from 2005 to 2007. The interim rate reductions in the proposed regulations will further reduce revenue to title insurers and increase title insurer concentration.

Response to Comment:
The Commissioner rejects this comment. To the extent that this comment is just a restatement of the previous comments set forth above, please see the individual responses which are also set forth above.

Moreover, the claim is unsupported that there will be fewer competitors when all are required to charge rates that are not excessive but that give each the opportunity to cover its reasonable costs and to earn a fair return. But even if one credits this prediction, it is no different an effect than would obtain in a competitive market. Were there price-competition, rates would be driven to non-excessive levels. To the extent there may be companies that cannot survive charge non-excessive rates, the free market would weed them out.

Moreover, the commenter has confused reduction in revenues and job-losses with interference with the free market. The Commissioner expects any diminution in industry employment due to the proposed regulations to be more than offset by the favorable effects on employment in other industries from consumers having more money to spend – particularly at a time when many of the affected consumers are meeting the needs of new homes or are taking equity out of their homes to meet other needs.

Summary of Comment (page 2030):
Despite the Commissioner's conclusions, the title industry returns on equity track those of the highly competitive banking industry. At the same time, the title industry's return on equity was lower than that of the Dow Jones Industrial Average. The lack of barriers to entry, coupled with the inability of any individual company to raise prices demonstrate that the title market is competitive both in terms of price and non-price competition.

Response to Comment:
The Commissioner rejects this argument. First, the comment is factually incorrect. The profitability cited -- return on equity -- for underwritten title companies and title insurers was generally greater than returns available from an investment in the S&P 500. Moreover, the comparison is inappropriate because the proper measure comparison is not what other industries have earned, but what the reasonable rate of return was for an industry subject to rate regulation.

During the period studied, the reasonable after-tax rate of return that would have been used in establishing reasonable rates for title insurance would have been in the range of 10% to 12% -- far less than the returns earned by title insurers and underwritten title companies and, consequently, indicating excess profitability of title insurers and underwritten title companies.

In addition, the reported profitability of title insurers and underwritten title companies greatly understates the profitability of the title and escrow industry for several reasons. First, many owners of underwritten title companies take profit as salary, bonus or commission, which reduces the stated profitability by turning profit into an expense. Second, there are many affiliate transactions among underwritten title companies, title insurance companies and other affiliates, some of which result in double-counting of expenses, some of which reflect profit reported as an expense, such as a management fee, and some of which are inflated expenses for services provided. Third, and most important, profitability, understood as the difference between revenue and the reasonable cost of providing a service is greatly understated because title insurers and underwritten title companies spend the bulk of what would otherwise be profit on expenditures that benefit the referrers of title and escrow business.

This "profit" is spent on illegal kickbacks as well as legal expenditures that provide no benefit to the consumer paying for the product, but greatly benefit the real estate agents, mortgage brokers, lenders and homebuilders who are in the position to refer business to title insurance companies and underwritten title companies. The evidence of such expenditures is found in the captive reinsurance schemes under which title insurance companies rebated almost half of the title insurance premium to homebuilders and in the very large percentage of personnel costs devoted to sales, marketing and consumer support, where consumer support is the industry term used to describe free services to those entities considered "customers" by title insurance companies and underwritten title companies -- namely, real estate agents, mortgage brokers, lenders and homebuilders.

To the extent that this comment contends that there are a lack of barriers to entry and that individual company prices have not risen, the Commissioner rejects these comments for the reasons set forth in response to more specific comments on these issues, as well as for the reasons forcefully pointed out in the Competition Report.

Summary of Comment (page 2030):

While consumers have enjoyed favorable interest rates in recent years, these interest rates were fueled by the real estate industry's investment in technology. By investing in automation, highly attractive rates with expiring interest rate locks were still available and consumers reaped the benefits of the title and escrow industry's investments in automation and technology.

Response to Comment:
The Commissioner rejects this comment. The Commissioner believes automation has lowered the cost of providing title search, examination, underwriting and policy production. It is clear that far less time is needed to search a title history when the records are available almost instantaneously on a computer than from searching through paper records. It is clear that far less time is needed to produce a title policy when the policy is printed from a software template than

from typing in individual information into a paper form. Although the commenter provides no evidence to support his contention that technology has allowed consumers to benefit from lower interest rates, the Commissioner allows for the possibility that this is true to some extent.

The problem is that the savings from automation which benefit the companies that invest in such automation have not been passed on to consumers in reduced prices, but have been passed on to the referrers of title business through additional services, as described by escrow company representatives at the August 30 hearing and in their written testimony.

Summary of Comment (page 2030):
The Department must first collect data that is current in order to properly examine filed rate changes and base future decisions upon that data.

Response to Comment:
The Commissioner rejects this comment. In light of the November 27, 2006 revisions to the regulations, the interim rate reductions will not take effect – if ever – until 2008. If the regulated licensees provide valid information for the statistical plan in 2008 and the Commissioner is able to publish those factors necessary to implement the permanent rate regulations, then the permanent rate regulations will become the controlling regulations and the interim rate reductions will not take effect. The statistical plan will ensure that current data are used to identify the point at which a rate becomes excessive. The Commissioner rejects the suggestion of the commenter, however, that the Commissioner act quickly in the interim to immediately put an end to at least one aspect of excessive rates in an uncompetitive environment through the interim rate reductions.

Summary of Comment (page 2031):
This is the cover page e-mail to the commenter's comment. It does not contain any comments on the regulations.

Response to Comment:

This portion of the comment is not specifically directed at the Commissioner's proposed regulations or to the procedures followed in proposing the regulations. No response is, therefore, necessary. (Government Code Sections 11346.9.)

<u>Volume 5, Comment No. 2041-2116:</u>

Commentator: Roger L. McNitt on behalf of United General Title Insurance Company
Date of Comment: Received 8/30/06
Type of Comment: Written

Summary of Comment (page 1-2):

This passage summarizes the commenter's general objections to the proposed regulations, the commenter's affiliation, as well as the general laws which describe the limitations on an agency's power to promulgate regulations that are necessary and consistent with existing law.

Response to Comment:

This portion of the comment is not specifically directed at the Commissioner's proposed regulations or to the procedures followed in proposing the regulations. Additionally, this portion of the comment reflects summaries of comments that are summarized and responded to in greater detail below. No response is, therefore, necessary. (Gov. Code section 11346.9.)

Summary of Comment (page 2, footnote 1 & footnote 3):

The Commissioner's reliance on the *20th Century Ins. Co. v. Garamendi* case is misplaced because that case involved Proposition 103's prior approval system of regulation, and not the file and use system of regulation applicable to title insurers. Notably, while the Court in *20th Century* pointed out in footnote 15 at page 287 that Proposition 103 repealed the law which denied the Commissioner the power to fix and determine rates, that law is still in effect for title insurance rates. Also, the *20th Century* case, at page 274, establishes that the McBride-Grunsky Act (which is the model adopted by the Legislature for the title insurance statutes) did not contemplate setting rates by rate regulation. Therefore, the Commissioner lacks such power with respect to title insurance rates.

Response to Comment:

The Commissioner rejects this comment. The Commissioner does not rely on *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216 for authority to impose prior-approval regulation, and the proposed regulations do not require prior approval of rates or otherwise conflict with the statutory file-and-use system. What is relevant from *20th Century* is the use of regulatory formulae similar to those in the proposed regulations to implement and make certain the statutory term "excessive," a word that appears in identical context in Proposition 103 and in Insurance Code section 12401.3. In footnote 15 of *20th Century*, the Supreme Court merely observes "in passing" that Proposition 103 repealed former Insurance Code section 1850, attaching no significance to the observation. The commenter's reference to page 274 of *20th Century* is also misplaced. The proposed regulations do not set rates, they merely define the boundary of excessiveness, leaving companies free to set their own rates anywhere not in excess of that boundary.

Summary of Comment (page 2-3 & footnote 1):

Rates for title insurers, underwritten title companies and controlled escrow companies are based on open competition rating in California. While Proposition 103 intended to replace open competition rating with a prior approval system, title insurance rates are not subject to Proposition 103. With respect to title insurance, the Commissioner lacks the power to fix and determine a rate level by classification or otherwise.

Response to Comment:

The Commissioner rejects this comment. The commenter misunderstands the statutory terminology. The phrase "open competition" is not a reference to the substantive standards for lawful rates but to the procedure by which companies are permitted to set their own rates. An "open competition" system is one in which the company is free to set its own rates without even filing them with the Department of Insurance. Proposition 103 replaced such an open competition system for property-casualty insurance with a prior approval system. The title insurance statutes do not establish an open competition system but rather a file-and-use system, in which companies file their rates and are free thereafter (typically after 30 days) to place those rates in effect, without affirmative approval of the Commissioner, unless the Commissioner acts to disapprove the rate.

The comment that the Commissioner lacks the authority to fix or determine rates is irrelevant to the proposed regulations, which do not seek to do so. The proposed regulations do not "fix" or "determine" rate levels. They define the level above which the rate is excessive. Companies are free to compete by charging any rate they wish so long as the rate is not "excessive." (Ins. Code § 12401.3.) It has long been understood that the code authorizes the Commissioner to prohibit excessive rates and that doing so does not constitute the proscribed fixing or determination of rates.

Summary of Comment (page 3):

Insurance Code section 12401.3 provides that expense provisions included by one title entity in setting rates may differ from those properly used by other title entities to reflect the operating methods of the person or entity with respect to any kind of insurance or other service. Thus, the Commissioner's attempt to impose an expense basis that is based upon industry-wide data is contrary to this statute.

Response to Comment

The Commissioner rejects this comment. The proposed regulations do not preclude companies from maintaining different expense provisions or operating methods, and the proposed regulations do not regulate companies' expenses. Rather, the proposed regulations regulate the rate charged, leaving it to the company to set the rate at a non-excessive level and to incur whatever lawful expenses it sees fit.

Summary of Comment (page 3)

Section 12401.5 permits the Commissioner to craft rules and regulations for the reporting of financial data and a statistical plan but specifically prohibits the Commissioner from fixing, determining or in any way impairing competitive rating or the free market.

Response to Comment

The proposed regulations do not “fix” or “determine” rate levels. They define the level above which the rate is excessive. Companies are free to compete by charging any rate they wish so long as the rate is not “excessive.” (Ins. Code § 12401.3.) It has long been understood that the code authorizes the Commissioner to prohibit excessive rates and that doing so does not constitute the proscribed fixing or determination of rates. The proposed regulations specify a maximum and permit companies to charge any rate that does not exceed the maximum. That preserves both “competitive rating” and, to the extent it otherwise exists, a “free market.” The regulations merely limit competition within the range of rates that are not excessive.

Summary of Comment (page 3-4 & Exhibit A):

The statutory procedures for reviewing title rates and charges found in Insurance code sections 12414.13 through 12414.19, while virtually identical to the McBride-Grunsky Act’s procedures, do not permit the Commissioner to promulgate title rates and charges. Nor do any other statutes permit the Commissioner to promulgate title rates and charges. Instead, the Commissioner is constrained to the quasi-adjudicative hearing procedures, at the conclusion of which the Commissioner may issue an order to prohibit future use of such a rating system. The similarities between the Commissioner’s proposed regulations and the Proposition 103 prior approval system are reflected in Exhibit A, which is attached to this comment. Because the Commissioner is attempting to promulgate title and escrow rates by following the steps of prior approval adopted in Proposition 103, the proposed regulations represent an impermissible approach to title rate regulation.

Response to Comment:

The Commissioner rejects this comment. The proposed regulations do not promulgate rates or charges, they define and make specific the statutory term “excessive,” a term which is identical in Proposition 103 and Insurance Code section 12401.3. The proposed regulations provide for a company-specific adjudicatory hearing, as the Insurance Code requires. The commenter’s argument, including his Exhibit A, are rejected because they suffer from a fundamental logical error: The fact that there may be similarities between two sets of regulations does not prove anything of relevance. Because Insurance Code section 1861.05 in Proposition 103 and Insurance Code section 12401.3 applicable to title insurance and escrow services use the same substantive standard, prohibiting “excessive” rates, there is nothing surprising or untoward about two sets of regulations implementing the two statutory systems. The commenter has failed to identify any provision of the proposed regulations that is unauthorized under the title insurance statutes.

Summary of Comment (page 4-5):

The legislative history of Senate Bill 1293 (Zenovich) confirms that the Commissioner does not have authority to promulgate title rates. The letter from Senator George Zenovich that the Commissioner cites in his Notice of Proposed Action and Notice of Proposed Hearing does not support the proposed regulations. In fact, the Commissioner omits reference to the Legislature’s intent to create a McBride-Grunsky system of rate regulation, which is a pattern of regulation that does not allow for the promulgation of rates by the Commissioner. As Exhibits B, through

G to this comment reflect, the legislature originally proposed a "file and use only if approved by the Commissioner" system of regulation, but ultimately shifted to a McBride-Grunsky Act approach that did not authorize the prior approval or promulgation of rates by the Commissioner.

Response to Comment:

The Commissioner rejects this comment. Commenter is incorrect, and employs erroneous and confused terminology, in asserting that the procedure adopted by the Legislature for title insurance was modeled after the McBride-Grunsky Act. That act established an open-competition system in which insurers did not even file rates with the Commissioner; Senate Bill No. 1293 of the 1973-74 Regular Session established a file-and-use system that the proposed regulations faithfully implement. (The commenter may be forgiven the confusion, since the reference to McBride-Grunsky appears in the legislative history, but it is not disputed that the McBride Act employs an open-competition system that is different from, and contrasted with, a file-and-use system. (See *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 243 & fn. 1; see also Analysis of Sen. Bill No. 1293 by Business & Transportation Agency (Aug. 30, 1973), attached by commenter as Exh. G ["This bill makes title insurance subject to the same rate regulation provisions applicable to property and casualty insurers with the exception that title insurers['] rates are to be filed with the Insurance Commissioner, whereas property and casualty rates generally are not required to be filed."].)

The legislative history of Senate Bill No. 1293 confirms that the statute was intended to provide meaningful regulation of rates and prohibition against excessive rates in the absence of a reasonable degree of competition. The commenter's Exhibit B, the letter from Sen. Zenovich to Gov. Reagan describing the bill, is emphatic that it is intended to vest the Commissioner with the authority to disapprove rates he finds excessive: "This bill substantially increases the regulatory power of the Department of Insurance over the business of Title Insurance in this state. . . . The Commissioner is thereby granted specific statutory authority to order termination of rates which are found to be excessive, inadequate or unfairly discriminatory." The Commissioner notes also in the legislative file on Senate Bill No. 1293 Sen. Zenovich's floor statement saying that the purpose of the legislation was "to completely revise and update existing regulatory laws governing" the title industry and "to establish a system of rate regulation far more vigorous than existing law" though "the establishment of a consistent pattern of rate regulation involving the entire title industry." The proposed regulation is intended to realize the promise of Senate Bill No. 1293 and its sponsors that has thus far gone unfulfilled.

Summary of Comment (page 5):

As Exhibit H to this comment reflects, the Legislative Counsel has opined that the Commissioner does not have authority to adopt a prior approval system of rate regulation for title rates, schedules or policy form filings. The Legislative Counsel opinion makes specific note of the Legislature's statement of purpose which expressly denied the Commissioner the power "to fix and determine a rate level by classification or otherwise." Additionally, the opinion states that, unlike rates subject to Proposition 103, the Commissioner cannot require title entities to justify their rate and form filings as a precondition to their use in California, and that the Commissioner could only make such a challenge through the quasi-adjudicative process set forth in Insurance

Code sections 12414.14 through 12414.17. The Legislative Counsel's opinion, while not binding, is entitled to great weight.

Response to Comment:

The commissioner rejects this comment. The opinion of the Legislative Counsel does not refer to the proposed regulations and is inapplicable to them. As noted above, the proposed regulations neither impose a system of prior-approval nor fix and determine rates.

Summary of Comment (page 6):

Case law establishes that the Insurance Commissioner's powers are delineated by statute and an agency has no discretion to promulgate regulations that are inconsistent with those powers granted by statute. Regulations that alter, impair or enlarge the scope of, or are otherwise inconsistent with the statute are void. Because the Commissioner does not have the statutory power to promulgate title entity rates, the proposed regulations are void.

Response to Comment:

The Commissioner rejects this comment. The proposed regulations do not promulgate rates and are not inconsistent with his statutory authority.

Summary of Comment (page 6-7):

The Commissioner's long-standing interpretation of the title insurance statutes is set forth in the interpretation made by the Department at the time of the enactment of the relevant statutes and thereafter. The interpretation set forth in the proposed regulations is inconsistent with the Department's historical interpretation. Because the Commissioner's authority to promulgate rates is not a technical area where the Commissioner could be said to have an interpretive advantage over the courts, the Department's interpretation of the title entity rating statutes is not entitled to any deference.

Response to Comment:

The Commissioner rejects this comment. The commenter has failed to identify any prior interpretation of the applicable statutes by the Commissioner that conflicts with the proposed regulations or the Commissioner's current interpretation of the statute. On the contrary, the proposed regulations merely apply authority the Commissioner has always had, has never denied, but has not previously applied.

Exhibits A through H:

To the extent that the commenter referenced these exhibits in support of his comments, the Department's responses to those comments and referenced exhibits are set forth above.